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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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COOLMATH.COM, LLC,

Plaintiff,

Civil Action No. 1:14cv1185

-against-

COOLMATHGAMES.COM,

Defendant.

COMPLAINT

CMH/TRJ

Plaintiff Coolmath.com, LLC ("Plaintiff"), by its undersigned attorneys, for its
Complaint alleges as follows:

SUBSTANCE OF THE ACTION

1. This is an action *in rem* brought under the Anticybersquatting Protection Act (“ACPA”), 15 U.S.C. § 1125(d), against the Internet domain name *coolmathgames.com*. Pursuant to the ACPA, Plaintiff seeks an order compelling the owner of the relevant domain name registry, VeriSign Global Registry Services (“VeriSign”), to transfer the defendant domain name to Plaintiff.

THE PARTIES

A. **Plaintiff**

2. Plaintiff Coolmath.com, LLC is a limited liability company organized under the laws of the state of California with a principal place of business at 200 Park Avenue South, Suite 1508, New York NY 10003.

B. **Defendant *coolmathgames.com***

3. Defendant *coolmathgames.com* is a domain name.
4. The registry for the *coolmathgames.com* domain name is VeriSign, located at 12061 Bluemont Way, Reston, VA 20190.
5. Upon information and belief, the current domain name registrar holding the *coolmathgames.com* domain name is GoDaddy.com, LLC, located at 14455 N Hayden Rd, Suite 226, Scottsdale, Arizona 85260.

6. Upon information and belief, on or about December 31, 2001, an individual identifying herself by the name Leandra Wilfred-Boyce, acting for and on behalf of an organization titled Vertical Axis Inc. (“Vertical Axis”), registered the *coolmathgames.com* domain name with GoDaddy.com.

7. In the registration record for the *coolmathgames.com* domain name, Ms. Wilfred-Boyce identified the registrant’s postal address as Stafford House, The Garrison

St Michael, BB 41038 Barbados and its email address as
domainmanagement@verticalaxis.com.

8. Upon information and belief, Vertical Axis is responsible for and controls the *coolmathgames.com* domain name, including its registration and use, and the creation of any websites that have appeared at that domain name, and profits from the use of such domain name.

JURISDICTION

9. This Court has subject matter jurisdiction under Section 39 of the Lanham Act, 15 U.S.C. § 1121, and under Sections 1331 and 1338(a) and (b) of the Judicial Code, 28 U.S.C. §§ 1331, 1338(a) & (b).

10. The Court has *in rem* jurisdiction over the *coolmathgames.com* domain name pursuant to Section 43(d)(2)(A) of the Lanham Act, 15 U.S.C. §1125(d)(2)(A). That section provides:

The owner of a mark may file an *in rem* civil action against a domain name . . . if:

- (i) the domain name violates any right of the owner of a mark that is registered in the Patent and Trademark Office, or protected under subsection (a) or (c) of this section [15 U.S.C. § 1125]; and
- (ii) the court finds that the owner –
 - (I) is not able to obtain *in personam* jurisdiction over a person who would have been a defendant in a civil action under [15 U.S.C. § 1125(d)(1)].

11. Consistent with the requirements of 15 U.S.C. § 1125(d)(2)(A)(i), as set forth below, the domain name *coolmathgames.com* violates Plaintiff's rights in the mark COOLMATH, which is registered in the Patent and Trademark Office and is protected under 15 U.S.C. § 1125(a).

12. Consistent with the requirements of 15 U.S.C. § 1125(d)(2)(A)(ii)(I), Plaintiff is not able to obtain *in personam* jurisdiction over any person who would have been a defendant in a civil action under 15 U.S.C. § 1125(d)(1) with respect to the domain name *coolmathgames.com*. Upon information and belief, the last registrant of the domain name, Vertical Axis, is a resident of Barbados with insufficient contacts in the United States that would subject Vertical Axis to personal jurisdiction in this or any other court in the United States.

VENUE

13. Venue is proper in this district under Section 43(d)(2)(A) of the Lanham Act, 15 U.S.C. §1125(d)(2)(A), because the registry for the domain name, VeriSign, is located in this District and because the provision's other requirements have been met, as set forth above.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

A. Plaintiff and Its COOLMATH Mark

14. Plaintiff is the owner of all rights in the trademark and trade name COOLMATH as well as numerous COOLMATH-inclusive marks (collectively, the "COOLMATH mark").

15. Since at least as early as 1997, Plaintiff has continuously used the COOLMATH mark to identify its math and science game and education websites.

16. Plaintiff's profile has risen dramatically since it was founded and, since 1998, Plaintiff has been considered a leading internet site for math games and education.

17. Plaintiff's websites operating under the COOLMATH mark now include *coolmath.com*, featuring games at levels of pre-algebra and up, *coolmath4kids.com*, with

lessons and games for children, and *coolmath-games.com*, a site focusing on math and science-oriented logic, strategy and memory games and brain training for people of all ages.

18. Plaintiff takes great pains to ensure that every game on its sites has educational value, with age-appropriate content and skills to be gained for the user. Notably, Plaintiff's sites do not allow games whose content promotes violence or which use guns. Based in part on the care Plaintiff has taken with its services, Plaintiff's websites are well-regarded by teachers and parents and are approved for use in schools across the nation.

19. Plaintiff's services offered under the COOLMATH mark have received numerous accolades from the education press. By way of example, *coolmath.com* was selected as Education Planet's top math site for the week of July 12, 1999 and was selected as the BBC pick of the week for the week of March 22, 1999.

20. Plaintiff's websites have become enormously popular among the general public. Plaintiff's website *coolmath-games.com* alone had 677 million visits between June 2013 and June 2014 and has received 3.49 billion page views.

21. Plaintiff's websites share a common look and feel. *Coolmath.com*, *coolmath4kids.com*, and *coolmath-games.com* all use the colors green, blue, yellow, red, and purple in bold fonts on a black background. This distinctive look and feel has been recognized in the education industry, including by *Education World*, which notes that *coolmath.com*'s "[b]right, bold colors and graphics are sure to delight kids of all ages." True and correct copies of printouts from Plaintiff's websites are attached hereto as Exhibit A.

22. Plaintiff's COOLMATH mark is displayed prominently on each of its websites.

23. As a consequence of Plaintiff's extensive and continuous use of the COOLMATH mark, the COOLMATH brand enjoys considerable goodwill in the United States and elsewhere.

24. In addition to the common law rights built up in the COOLMATH mark through nearly two decades of use, COOLMATH has been registered in the United States for use in connection with "Computer services, namely, providing on-line website in the field of mathematics and science education; entertainment services, namely, providing on-line computer games in the field of mathematics and science [e]ducation" in International Class 41. This trademark registration, U.S. Registration No. 3,404,699, is attached hereto as Exhibit B. This registration is valid, subsisting and in full force and effect.

25. Pursuant to Section 33(b) of the Lanham Act, 15 U.S.C. § 1115(b), U.S. Registration No. 3,404,699 serves as *prima facie* evidence of the validity of the registered COOLMATH mark, of Plaintiff's ownership of the registered mark, and of Plaintiff's exclusive right to use the registered mark in connection with the goods and services identified in the registrations. Further, U.S. Registration No. 3,404,699 has become incontestable under Section 15 of the Lanham Act, 15 U.S.C. § 1065, and therefore serves as conclusive evidence of the validity of the registered mark, of the registration of the mark, and of Plaintiff's exclusive right to use the mark in commerce on or in connection with the goods and services for which the mark is registered.

B. Use of the *coolmathgames.com* Domain Name

26. Upon information and belief, on December 31, 2001, Vertical Axis registered the *coolmathgames.com* domain name with registrar GoDaddy.

27. Upon information and belief, for more than 12 years, Vertical Axis used *coolmathgames.com* as a link farm.

28. Upon information and belief, on or about February 8, 2014, Vertical Axis and/or certain individuals or companies under its control launched a website at *coolmathgames.com* offering online math-related games aimed at students. The *coolmathgames.com* website mimicked the look and feel of Plaintiff's own websites operated under the COOLMATH mark, including by using Plaintiff's recognized trade dress of the colors green, blue, yellow, red, and purple in bold font on a black background. True and correct copies of a printout from the *coolmathgames.com* website are attached hereto as Exhibit C.

29. Upon information and belief, the copycat *coolmathgames.com* website was designed to deceive consumers into believing that the website belonged to Plaintiff and was intended to illegitimately exploit the renown of the COOLMATH mark by drawing Internet traffic from users looking for legitimate COOLMATH services.

30. The domain name *coolmathgames.com* incorporates Plaintiff's COOLMATH mark in its entirety and is substantially identical to Plaintiff's domain name *coolmath-games.com*. The services offered at *coolmathgames.com* were identical to those offered by Plaintiff on its websites operated under the COOLMATH mark, particularly those offered at *coolmath-games.com*. The domain name is thus confusingly similar to the COOLMATH mark and to the services offered under the mark.

31. The *coolmathgames.com* website so closely resembled Plaintiff's websites, particularly Plaintiff's website *coolmath-games.com*, that, upon information and belief, it has led to actual consumer confusion among Plaintiff's customers.

32. Unlike Plaintiff's websites, the infringing website launched at *coolmathgames.com* offered gun games and others which promote violence and are therefore harmful to students. Moreover, many people, including Plaintiff, teachers and parents, find such games inappropriate for students. Any association between Plaintiff and violent games would irreparably damage Plaintiff's reputation among consumers.

33. Vertical Axis is not affiliated with Plaintiff in any way and did not receive authorization or permission from Plaintiff to use the COOLMATH mark in any manner, including in connection with the domain name *coolmathgames.com* or any website associated therewith.

34. On or about May 21, 2014, Plaintiff became aware of the infringing website at *coolmathgames.com* when a developer with whom Plaintiff had worked in the past informed Plaintiff that he had been contacted by an individual at *coolmathgames.com*.

35. On May 23, 2014, Plaintiff began its efforts to have the infringing website taken down, including by sending a cease and desist letter to the email addresses coolmathgames@domainsbyproxy.com and admin@coolmathgames.com listed on the *coolmathgames.com* website.

36. In or about June 2014, Plaintiff requested that Vertical Axis transfer the *coolmathgames.com* domain name from Vertical Axis. Vertical Axis expressed

willingness to “rent” Plaintiff its *coolmathgames.com* domain name, but demanded \$20,000 a month for the “rental” of the domain name.

37. On or about July 9, 2014, the infringing website was removed from the *coolmathgames.com* domain name.

38. Upon information and belief, Vertical Axis has engaged in the above conduct willfully and deliberately, with full knowledge of Plaintiff’s prior and exclusive rights in the COOLMATH mark, and with the intent to misappropriate Plaintiff’s goodwill in the COOLMATH mark and to deceive consumers into believing that the website is connected with Plaintiff.

C. **Harm to Plaintiff**

39. The above-described conduct of Vertical Axis is likely to cause confusion, to cause mistake or to deceive consumers as to the source, origin or sponsorship of the *coolmathgames.com* website, and wrests from Plaintiff the ability to control the use of the COOLMATH name and mark and the valuable goodwill therein.

40. The aforesaid conduct is causing, and unless enjoined will continue to cause, immediate and irreparable injury to Plaintiff and to the goodwill and reputation of the COOLMATH mark.

**CLAIM FOR RELIEF –
VIOLATION OF ANTICYBERSQUATTING
CONSUMER PROTECTION ACT
(15 U.S.C. § 1125(d))**

41. Plaintiff repeats and realleges Paragraphs 1 through 40 as if fully set forth herein.

42. Plaintiff’s COOLMATH mark was distinctive at the time of the registration of the *coolmathgames.com* domain name.

43. Without authorization from Plaintiff or any other related entity, Vertical Axis has registered, trafficked in, and/or used the domain name *coolmathgames.com*, which is confusingly similar to Plaintiff's federally registered COOLMATH mark.

44. Upon information and belief, Vertical Axis had full knowledge of Plaintiff's prior rights in the COOLMATH mark when it secured a registration for the infringing domain name *coolmathgames.com*.

45. Vertical Axis has registered, trafficked in, and/or used the infringing domain name *coolmathgames.com* with the bad faith intent to profit from the COOLMATH mark. Upon information and belief, *coolmathgames.com* has been used by Vertical Axis with the bad faith intent to reap the benefit of the goodwill in the COOLMATH mark, to divert consumers to the infringing website for its own commercial gain, and to otherwise profit from unauthorized use of the COOLMATH mark.

46. The aforesaid acts and conduct constitute cyberpiracy in violation of the Anticybersquatting Consumer Protection Act, Section 43(d) of the Lanham Act, 15 U.S.C. § 1125(d).

47. The unauthorized registration and use of the *coolmathgames.com* domain name is causing immediate and irreparable injury to Plaintiff and to the goodwill and reputation of the COOLMATH mark, and will continue to damage Plaintiff and the COOLMATH mark unless the Court enjoins such use and transfers registration of the *coolmathgames.com* domain name to Plaintiff.

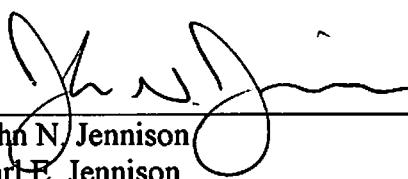
WHEREFORE, Plaintiff demands judgment as follows:

- A. That the Court order the *coolmathgames.com* domain name to be registered in Plaintiff's name; and
- B. That the Court order such other and further relief as the Court may deem just and proper.

Dated: September 8, 2014

Respectfully submitted,

JENNISON & SHULTZ, P.C.

By 

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